

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 12, 2021 appellant, then a 44-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment, including the repetitive nature of her duties. OWCP accepted the claim for carpal tunnel syndrome of the right and left upper limb. On May 18, 2021 appellant underwent an OWCP-authorized right carpal tunnel release and on June 1, 2021 she underwent an OWCP-authorized left carpal tunnel release. OWCP paid her wage-loss compensation by electronic funds transfer on the supplemental rolls beginning March 2, 2021 and on the supplemental rolls from March 2 through May 7, 2021, and on the periodic rolls from March 8 through August 14, 2021.

Appellant returned to her full-time usual employment on July 19, 2021. In a telephone memorandum (Form CA-110) dated August 13, 2021, she advised OWCP that she had submitted paperwork showing that she had returned to work but had continued to receive compensation.

In an August 23, 2021 preliminary overpayment determination, OWCP notified appellant of its preliminary finding that she had received an overpayment of compensation in the amount of \$3,223.12 because she returned to full-time work on July 19, 2021 but continued to receive wage-loss compensation for total disability on the periodic rolls through August 14, 2021. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records supporting income and expenses. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

In an overpayment action request form dated August 29, 2021, appellant requested a decision based on the written evidence. She contended that the recovery of the overpayment should be waived, contending that she called and had sent forms to OWCP advising that she had been released to return to work. On an accompanying OWCP-20 form, appellant listed monthly income of \$4,500.00 and monthly expenses of \$1,565.00 for housing, \$706.81 for utilities, \$2,854.92 for other expenses, and \$500.00 for credit card payments, a total of \$5,626.73. She advised that she used any extra for food and clothing. Appellant indicated that she had funds on hand of \$157.39. She submitted financial documentation showing various bills and account statements. Appellant further submitted a U.S. Individual Income Tax Return (Form 1040) filed with her spouse showing income of \$124,605.00 and taxable income of \$99,595.00. She also provided a statement showing that she had received a distribution of \$14,169.00 in 2020 from her Thrift Savings Plan (TSP).

By decision dated September 28, 2021, OWCP finalized its finding that appellant received an overpayment of \$3,223.12 for the period July 19 through August 14, 2021 because it had paid her wage-loss compensation for total disability after she returned to work. It calculated the overpayment by finding that she received net compensation in the amount of \$3,342.49 for the

period July 18 to August 14, 2021. OWCP divided \$3,342.49 by 28 days and multiplied by 27, the number of days of the overpayment, to find a total overpayment of \$3,223.12. It further finalized its finding that appellant was without fault in the creation of the overpayment. OWCP denied waiver of recovery of the overpayment. It found that based on a joint 2020 tax return, appellant and her husband had an estimated income of approximately \$6,389.00 per month after taxes. OWCP further noted that appellant had not provided a breakdown of her assets, described her other expenses of \$2,854.92, or documented her utility expenses other than to submit a gas bill of \$72.00. It indicated that individual was responsible for providing information about income, expenses, and assets. OWCP found that appellant should submit the full amount as recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.² Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.³

Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.⁴ OWCP's procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,223.12 for the period July 19 through August 14, 2021, for which she was without fault because she continued to receive wage-loss compensation for total disability after she returned to full-time work.

Appellant resumed to full-time regular employment on July 19, 2021. OWCP, however, continued to pay her wage-loss compensation for total disability following her return to work

² 5 U.S.C. § 8102(a).

³ *Id.* at § 8129(a).

⁴ *Id.* at § 8116(a).

⁵ *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *K.P.*, Docket No. 19-1151 (issued March 18, 2020); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Determinations in an Overpayment*, Chapter 6.300.4(g) (September 2020).

through August 14, 2021, which resulted in an overpayment of compensation. Appellant was not entitled to receive temporary total disability benefits and actual earnings for the same time period.⁶

In determining the amount of overpayment, OWCP calculated the net amount of disability compensation that appellant had received for the period July 18 through August 14, 2021, \$3,342.49, divided this amount by 28, and multiplied the remainder by the 27 days that she worked during this period to find an overpayment of \$3,223.12. Thus, the Board finds that appellant received an overpayment of \$3,223.12 during the above-noted period.⁷

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment must be recovered unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁸

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.⁹ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁰ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹¹ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹²

Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the

⁶ *J.R.*, Docket No. 20-0025 (issued December 13, 2021); *L.T.*, Docket No. 19-1389 (issued March 27, 2020); *S.N.*, Docket No. 19-1018 (issued November 12, 2019).

⁷ *J.R.*, *id.*

⁸ 5 U.S.C. § 8129.

⁹ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400(2)(3) (September 2020).

¹⁰ *Id.* at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹¹ *Id.* at Chapter 6.400.4(a)(2).

¹² *Id.* at Chapter 6.400.4(b)(3).

worse.¹³ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.¹⁴

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁶

The Board finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she did not fully complete the Form OWCP-20 or submit adequate documentation of her income or expenses. In an OWCP-20 form dated August 29, 2021, appellant listed monthly income of \$4,500.00 and monthly expenses totaling \$5,626.73. She advised that she had assets of \$157.39 and no money in stocks and bonds. Supporting documentation, however, indicated that appellant had withdrawn \$14,169.00 from her TSP in 2020. She thus had assets in a TSP but did not provide information regarding this account. Savings in a TSP account are included in the asset base.¹⁷ A tax return from 2020 further indicated that appellant had more monthly income than disclosed on the OWCP-20 form. Although OWCP advised her to submit a Form OWCP-20 and documentation fully substantiating her income and expenses, she failed to do so, as required by section 10.438 of OWCP's regulations.¹⁸

As appellant did not submit sufficient financial information and documentation, the evidence of record is, therefore, insufficient to establish that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁹

¹³ 20 C.F.R. § 10.437(a)(b); *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁴ *Supra* note 9 at Chapter 6.400.4c(3).

¹⁵ *Supra* note 9 at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *See J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁷ *See S.C.*, Docket No. 17-0762 (issued March 19, 2018); *C.P.*, Docket No. 14-0975 (issued September 11, 2014).

¹⁸ 20 C.F.R. § 10.438; *see R.M.*, Docket No. 19-1570 (issued June 1, 2020).

¹⁹ *See supra* note 15; *S.L.*, Docket No. 21-0902 (issued December 22, 2021).

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁰

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,223.12 for the period July 19 through August 14, 2021, for which she was without fault, because she continued to receive wage-loss compensation after she returned to work. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

²⁰ With respect to recovery of the overpayment of compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA. As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to the recovery of the overpayment under the Debt Collection Act. *R.W.*, Docket No. 18-1059 (issued February 6, 2019); *Cheryl Thomas*, 55 ECAB 610 (2004).